



City of Westminster

Cabinet Member Decision Report

Decision Maker:	Cllr Daniel Astaire: Cabinet Member for Planning and Public Realm
Date:	7 April 2017
Classification:	General Release
Title:	Use of Section 106 funding to support the delivery of the St Mary Magdalene Church community development project
Wards Affected:	Westbourne Ward
Summary:	This report seeks approval to allocate £1,009,723.84 of funding secured from a s106 Agreement dated 2/4/15 in respect of a development at 325 Harrow Road, W9 (14/10440/FULL) to help fund the provision of social and community uses as part of the proposed St. Mary Magdalene education facility and community café
Key Decision:	Yes
Financial Summary:	£1,009,723.84 of Section 106 funding to be used towards the capital costs of constructing the new social and community facilities which will include new learning facilities and a community café. The use of the funding in this way fully accords with the terms of the Section 106 legal agreement against which it was secured and would have no implications on the councils financial resources.
Report Authors:	Rebecca Cloke, Place Shaping Coordinator Patrick Ransom, Place Shaping Officer

1. Executive Summary

- 1.1 In April 2016 The Executive Director of Growth Planning and Housing agreed in principle that Westminster City Council would provide £1 million of partnership funding to help support the delivery of the St. Mary Magdalene community development project. The approval in principle was required to support the projects application for funding from the Heritage Lottery Fund (HLF) which was granted in April 2016 to a value of £3,575,052.
- 1.2 This report provides an overview of the project and recommends that the council's commitment to help fund the project is met through the allocation of Section 106 (S106) funding which, has been secured by a s106 Agreement dated 2/4/15 in respect a development at 325 Harrow Road W9 (Planning reference 14/10440/FULL) for the provision of social and community uses in the North Westminster Economic Development Area. The total contribution secured in respect the development to be applied for these purposes was £1,009,723.84) and The Cabinet Member for Planning and Public Realm is asked to approve the release of this funding to help support the delivery of the St Mary Magdalene project.

2. Recommendations

- 2.1 To help support the delivery of the St Mary Magdalene community project it is recommended that the Cabinet Member for Planning and Public Realm approves:
- (i) the allocation to the project of £1,009,723.84 of Section 106 funding secured in respect of a development at 325 Harrow Road W9 for the provision of social and community uses in the North Westminster Economic Development Area;
 - (ii) that the funding shall only be used to facilitate the construction of the additional social and community floorspace; and
 - (iii) that the funds should be released in line with option B set out in paragraph 5.7 and that a legal undertaking be entered in to with the Paddington Development Trust which would allow the council to monitor expenditure and reclaim any sums that are not spent in accordance with that undertaking.

3. Reasons for Decision

- 3.1 To support a community project that will benefit Westminster's residents in the area and to fulfil a commitment to providing partnership funding.

4. Background

- 4.1 Westminster City Council has committed to supporting a project at St. Mary Magdalene Church in Westbourne Ward to create a new community and heritage hub as part of a wider church restoration project. In April 2016 the Executive Director for Growth, Planning and Housing committed £1 million partnership funding towards the scheme.
- 4.2 The church is a Grade I listed structure and is on Heritage England's "buildings at risk register". It is architecturally significant and an imposing local landmark. It used to form the end of a row of canal side terraces, but is now set within public open space next to a local primary school. It was built in 1860s-70s by G.E.Street to inspire and engage the local community. That community connection has been lost in recent times. The Paddington Development Trust (PDT), working directly with the

church, are leading a project to restore the building and reconnect it with the modern-day community.

- 4.3 To that end, a Heritage Lottery Fund grant of £3,575,052 was secured in April 2016 to restore the Church and create a new building linking the church with the school to provide community facilities. Planning permission has recently been granted (15/07195/FULL) for a “*three storey extension to the west side of church into public open space to create a café, education room and associated facilities*”.
- 4.4 The project will benefit local residents, visitors and businesses. It will deliver a substantial learning, volunteering and training programme, developed with the close involvement of local community organisations. The new facilities and the church itself will provide a learning environment, used regularly by local schools and adult learners. More information about the project and its aims can be found on the website at www.pdt.org.uk/st-mary-magdalene-restoration. The building and its use will also have huge benefits for the canal side public open space by providing a much-needed focus and natural surveillance.
- 4.5 The outputs of the project will be significant as the site is located within the North Westminster Economic Development Area and is on the edge of the Harrow Road Place Shaping Programme boundary. The aims of the latter include increasing footfall in the area, diversifying the local retail offer and increasing employment and training opportunities. This project will contribute to all of these aims and is likely to have positive impacts for the Harrow Road as people who visit the café and community centre are likely to spend time in the area, which will drive up footfall and increase local spend. It is also anticipated that the Harrow Road community will use the facilities being provided at the church. Figure 2 shows how the project links to the wider area and how people are likely to move to and from the site.
- 4.6 The new building is mainly built on a narrow piece of land between the school and the Church which is owned by St Mary Magdalene Primary School. It is proposed this land will be sold to the Parochial Church Council (PCC) on a 150yr lease. The building does extend on to the canalside public open space, owned by the City Council. This amounts to just over 30m² and will be sold outright to the PCC. The associated outside terrace and cycle parking area on the canalside open space will be leased to PCC/PDT, by agreement. See paragraph 7.3 for more detail.



Figure 1: An illustration of what the new café could look like.

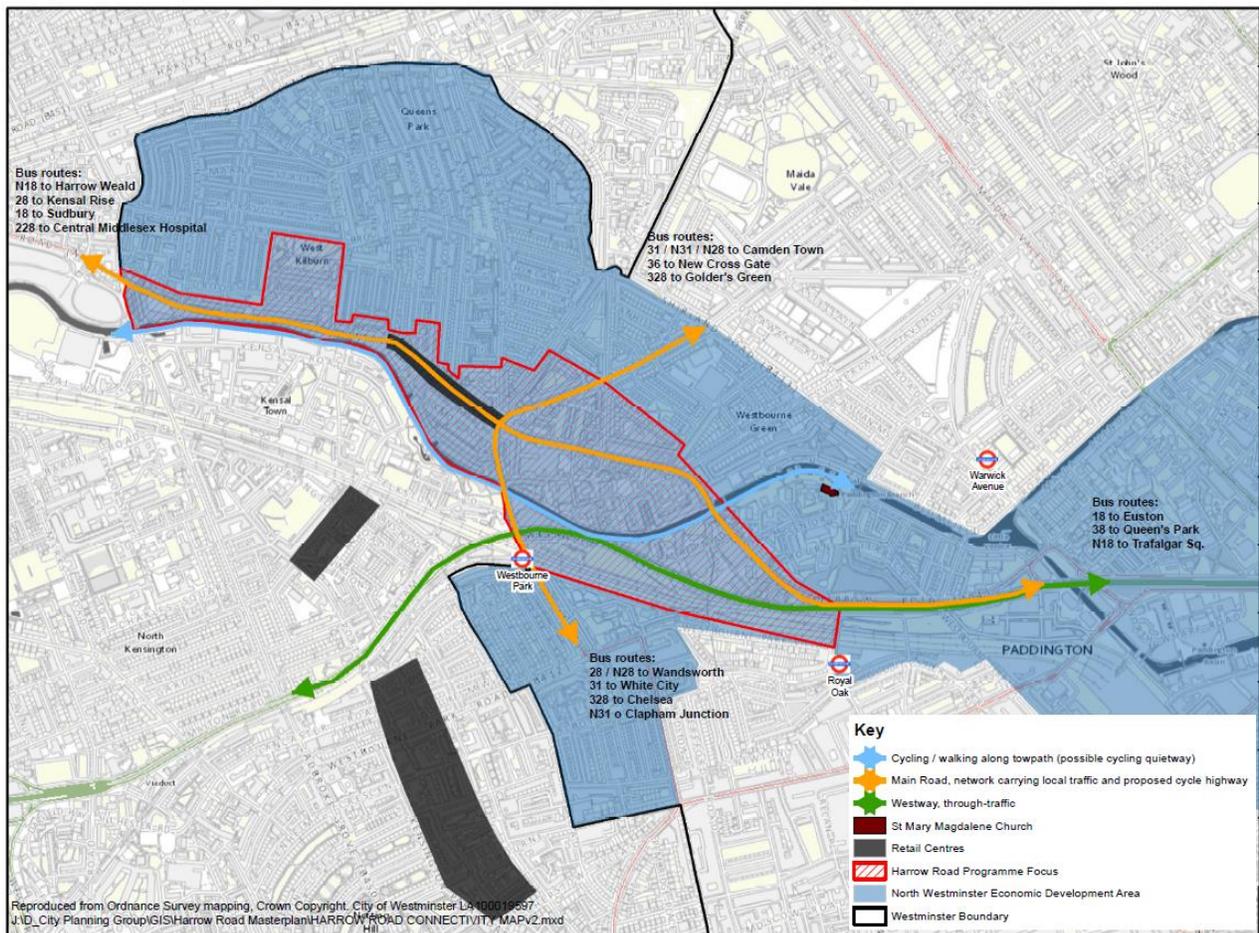


Figure 2: A map of connectivity and movement in the Harrow Road area.

5. Financial implications

5.1 Westminster City Council has committed to providing £1,009,723.84 partnership funding towards the project. This was a significant factor in the success of the Heritage Lottery Bid.

5.2 Over £7 million funding has been secured for the project from the following sources:

- Heritage Lottery Fund grant: £3,575,052;
- Westminster City Council: £1,009,723.84;
- Private donations: £925,000;
- Listed places of worship grant scheme: £792,986;
- Trusts/charities/foundations: £681,150;
- Community: £26,746; and
- Other: £299,378.

5.3 It is proposed that the City Council's contribution towards the project is provided from S106 funding linked to a development at 325 Harrow Road. This money was secured through the "Social and Community" obligation of a S106 agreement and was secured for the "...provision of social and community use/s within the North Westminster Economic Development Area to mitigate the loss of social and community floor space from the property".

5.4 The council's City Plan (2013) provides a definition of social and community use:

"These facilities are available to, and serve the needs of local communities and others provided by a local service provider or are often funded in some way by a grant or investment from a government department or public body or the voluntary sector. Social and community facilities are comprised of buildings and external spaces. They include social services uses such as day-care centres, luncheon clubs, and drop-in centres, facilities for children and families, elderly people, people with mobility and/or sensory impairments, people with HIV/AIDs or other diseases covered under the Disability Discrimination Act, people with mental health or substance misuse problems. Other facilities include education facilities such as schools, colleges and universities, health facilities, recreation facilities such as playgrounds, leisure centres, sports pitches and associated buildings, youth centres and local arts facilities. Libraries, places of worship, courts, general and social uses such as community meeting facilities, community halls, public toilets, facilities for emergency services, fire, ambulance and police. The public social and community facilities are in classes C2, D1, D2 and possibly some sui generis uses in accordance with the Town and Country Planning (Use Classes) Order 1987 and its subsequent amendments".

5.5 It is proposed that these S106 funds are spent on the construction of the new wing which will provide social and community facilities in accordance with the definition in 5.4. Construction costs for the new wing are estimated at £1,711,836. Total construction costs for the whole project, including repair and conservation of the church amount to an estimated £4,088,086.

5.6 While the land and new building will be owned by the church, PDT will manage the new facilities, including the café. It is stated in the lease that has been granted to PDT that any revenue generated has to be spent on the objectives of the scheme and must be spend on community based projects. Extracts from the lease agreement are provided in Appendix 2.

5.7 Two options for release of the S106 funds are outlined below for consideration:

- A. The Council releases the full £1,009,723 in one lump sum in advance of works commencing. The risk to the City Council is high in that if the development, for whatever reason, is not completed the Council would be in breach of its obligation to spend the S106 funding in accordance with the S106 agreement. It is suggested that a legal undertaking

would accompany the release of funds to ensure the Council is entitled to a full refund in such an eventuality.

- B. The Council releases funding in two tranches, with £357,639 in advance of works commencing for project development and enabling works. The remainder of the funding would be released upon formal commencement of the site works. This reduces the risk to the Council in the event that the building is not completed. Both funding releases in this option would be subject to a legal undertaking, as outlined in Option A.

5.8 There are rigorous procedures in place for monitoring the spend of money and project progress as part of the Heritage Lottery Bid, and all funding is in place for the project to proceed, so the risk of the new building not being completed is considered low. However, a legal undertaking issued alongside release of funds is recommended.

6. Consultation/Communications

6.1 The project has been subject to the statutory consultation through the planning process. In addition, PDT have consulted widely with the local community and organisations. PDT's consultation schedule can be seen in Appendix 3.

7. Legal Implications

7.1 Section 106 of the Town Planning Act 1990 enables a Local Planning Authority to enter into an agreement with a person with an interest in land to regulate the use of the land, including amelioration of development impacts. Financial contributions can be secured and received under the provisions of a section 106 agreement.

7.2 There is a risk to the City Council in releasing S106 funding ahead of the completion of the provision for which it is intended. In so doing, the City Council puts itself at risk of being in breach of the terms of the S106 agreement in the event (however unlikely) that the community facility, in this case, is not completed. A legal undertaking will be drafted and sent to PDT for signing ahead of the release of funds to agree that, in the event the facility is not completed, the City Council will seek the reimbursement of its full contribution. The undertaking will take into account the project stages and monitoring processes set in place to satisfy the requirements of the Heritage Lottery Fund.

7.3 There are legal issues surrounding land ownership and management but these are not the subject of this report and are provided for information only. To enable the works and successful management of the facility it is anticipated that there will be three simultaneous legal transactions, executing:

1. The transfer of land currently used by SMM Primary School to the Incumbent and PCC (under a 150 year lease);
2. The transfer of land from Westminster City Council to the Incumbent and PCC (freehold for the Heritage Wing, license for the café terrace); and,
3. The grant of a 25 year lease by the Incumbent and PCC to PDT, for use and management of the church and heritage wing.

The PCC is the Parochial Church Council and the incumbent refers to the Reverend Robert Henry Everett.

Appendices List (Standard Appendix 1 must be attached):

- Appendix 1 – Standard Appendix 1
- Appendix 2 – Extracts from the café lease to PDT
- Appendix 3 – PDT's consultation schedule

If you have any queries about this report or wish to inspect any of the Background Papers please contact: Rebecca Cloke (rcloke@westminster.gov.uk) or Patrick Ransom (pransom@westminster.gov.uk).

Background Papers:

- Heritage Lottery Bid for the project
- Current list of project funders

If applicable:

This report consists of exempt and non-exempt information. The exempt information is contained in Appendices A to H and is exempt by virtue of para 3 of Schedule 12A of the Local Government Act 1972 (as amended) in that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information).

For completion by the **Cabinet Member for Planning and Public Realm**

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____

NAME: _____

State nature of interest if any
.....

(N.B: If you have an interest, you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled

Use of Section 106 funding to support the delivery of the St Mary Magdalene Church community development project and reject any alternative options which are referred to but not recommended.

Signed

Councillor Daniel Astaire, **Cabinet Member for Planning and Public Realm**

Date

If you have any additional comment you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:
.....
.....
.....

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, Chief Operating Officer and, if there are resources implications, the Director of Human Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

Appendix 1 - Other Implications

1. Resources Implications

The City Council is committing £1,009,723.84 S016 funding towards the project at St Mary Magdelaine Church. A legal undertaking will be drafted by Westminster's Legal team. An officer in the Policy team in PPC will oversee the draw down of the S106 funding. Officers in the Place Shaping team in GPH will oversee the monitoring of the project as it progresses. There are no further resource implications.

2. Business Plan Implications

There are no Business Plan implications. The project itself is being carried out by PDT.

3. Risk Management Implications

There are no further risks other than those outlined in the report.

4. Health and Wellbeing Impact Assessment including Health and Safety Implications

There is not a Health and Wellbeing Impact Assessment associated with this report.

5. Crime and Disorder Implications

There are no crime and disorder implications associated with this report.

6. Impact on the Environment

The new community building will comply with all relevant building standards.

7. Equalities Implications

There are no equalities implications associated with this report.

8. Staffing Implications

There are no staffing implications associated with this report.

9. Human Rights Implications

There are no human rights implications associated with this report.

10. Energy Measure Implications

The new community building will comply with all relevant building standards.

11. Communications Implication

PDT have a comprehensive communications plan in connection with the project.

Appendix 2 – Extracts from the café lease to PDT

SMM PCC-PDT LEASE EXTRACTS

Clause 30.14

During the term of this lease the Tenant shall only apply rents or other receipts from the Property net of the cost of meeting obligations under this lease and the cost of managing the Tenant's activities in the Building (including a reasonable sum in respect of the core costs and expenses of the Tenant reflecting the extent to which they would be applicable to administration of the Tenant's obligations under this lease and activities in the Building) towards fulfilment of the Agreed Aims.

Agreed Aims: The agreed aims of the Landlord and the Tenant in entering into this lease and undertaking the Works and comprising the Shared Values in so far as the same are within the charitable objects of the Tenant and in so far as the Tenant has power to do so namely:

- (a) To sustain the Church as a parish church and place of worship.
- (b) To share the Building with as wide a public as possible.
- (c) To bring together people of different cultures and backgrounds, and foster understanding and good relations between them.
- (d) To use the Building in ways which respond to and serve the needs and interests of the whole community in Paddington, regardless of faith.
- (e) To offer opportunities and experiences at the Building which enrich people's lives.
- (f) To provide a permanent home for the stories of Paddington's heritage, where local residents and visitors and can learn about it.
- (g) To make Building a heritage educational and cultural destination of distinction.
- (h) To care for the Church, conserving it and maintaining it in a good state of repair.
- (i) To adhere to good environmental practices, minimising the environmental impact of the building and our operations, and providing an exemplar in this regard for other historic churches.
- (j) To generate income to help fund the above.

Appendix 3 – PDT's Consultation Schedule

Schedule of community and public consultation: 2006 to present

2006 to present	Westbourne Neighbourhood Forum (WNF): at each stage in the process evolving proposals for SMM have been considered at WNF committee meetings.
2007	Consultation on the Richard Griffiths Architects proposals and design, including at WNF working group and public meeting, and meetings with local stakeholders.
Nov 2010	Community Open Day at SMM, consulting on Dow Jones Architect's initial design.
2011 to present	St Mary Magdalene Primary School: regular meetings with headteacher, presentations to governors meetings (x 3), meetings with parents (March 2015 and November 2016), attendance at school summer party (July 2015).
2012-13	<p>Consultation to inform activity planning and business planning pre-HLF round one application. Involved:</p> <ul style="list-style-type: none"> • community groups and organisations (e.g. school parents coffee mornings, Open Age, Westminster Society for People with Learning Disabilities (WSPLD), African Women's Group); • local primary and secondary schools; • service delivery organisations (e.g. Westminster Adult Education Service (WAES), Network Rail); • heritage and cultural organisations (e.g. Hoxton Hall, Anglo-Catholic History Society, Gorton Monastery); • presentation to the Westminster Culture Network (May 2013).
2014-15	<p>Interviews to inform HLF round two activity plan and business planning:</p> <ul style="list-style-type: none"> • Step up to Fitness • African Woman's Group • One Westminster • Sure Start Children's Centre • Westbourne Park Family Centre • Westminster Academy • Paddington Academy • Our Lady of Dolores Primary School • Edward Wilson Primary School • WAES • Open Age • The Floating Classroom • University of Westminster • City of Westminster College • Westminster Culture Network • Westminster City Archives • London Metropolitan Archives • ICON • Museum of London • MOLAS • London Transport Museum • Migration Museum Project • Arab British Centre • National Churches Trust • Churches Conservation Trust • The Tobacco Factory • The Garden Museum • Bishops Palace, Wells • All Saints Kingston • Wiltons Music Hall
June 2014	Public consultation at Westbourne Summer Festival.

Aug – Sept 2014	Market research survey with the public around Paddington Station and Little Venice Canal Basin (c.300 responses).
Oct 2014	Public consultation sessions with: <ul style="list-style-type: none"> • SMM congregation • young people at the Stowe Youth Centre • parents at Westbourne Park Family Centre Community Open Day at SMM, consulting on designs, activity programming and Conservation Plan.
Nov 2014	Accessible public consultation session at the Stowe Youth Centre (held due to the fact that the session at the church in October could not facilitate disabled access).
Nov 2014 to present	Meetings of SMM Volunteer Design Group (x 5): a group of interested residents, plus WSPLD, established to shadow and feed into the design process.
June 2015	Public consultation at Westbourne Summer Festival.
Oct 2015	Public consultation on the project's planning application.
Oct 2016 – Feb 2017	Focus groups with community organisations to fine-tune activity programme development.
Jan 2017	Winter Festival event at SMM including consultation with residents to fine-tune activity programme development.